

Introduction

On July 15, 2009, New Jersey Policy Perspectives released a report (“All That Glitters Isn’t Gold – Tax Abatements in Jersey City”) criticizing New Jersey’s long-term tax abatement statute and recommending a series of broad changes to the law. As the state’s most experienced practitioner of long-term tax abatements, and the subject of this report’s only case study, the Jersey City administration felt it was important to respond to both the criticisms and the recommendations in a thoughtful, comprehensive manner.

Overall, the administration believes the criticisms voiced in the NJPP report reflect a misunderstanding of how and why long-term tax abatements are used, and ignore a number of fundamental fiscal and economic benefits. Furthermore, the administration believes that the recommendations would impose arbitrary restrictions on tax abatement use, add layers of unnecessary bureaucracy to the process and ultimately stifle development and growth at a time when Jersey City and New Jersey can least afford to do so.

This document was prepared by the Office of the Mayor in conjunction with the Department of Business Administration, the Department of Law, the Office of Tax Exemption and the Office of Tax Assessment.

NJPP Criticisms

1) Vague definitions provide overly broad discretion to municipalities

Response: An “area in need of redevelopment” has a precise legal definition that is virtually identical to the antiquated “blight” standard used several decades ago. Contrary to the author’s assertion, there was no significant change in the designation standard when the Legislature renewed the original long-term tax abatement statute in 1992, changing the language from a “blighted” area to an “area in need of redevelopment.”

Jersey City has approved 82 separate redevelopment plans to improve different parts of the city, constituting nearly 4,000 acres and 42 percent of the city’s geographic footprint. All but 50 of these acres qualified for the “area in need of redevelopment” designation and thus would have passed muster under the original “blight” standard. The remaining acreage was designated for redevelopment under the slightly less restrictive “area in need of rehabilitation” standard.

2) The public has insufficient time to challenge abatements and is excluded from negotiations between the municipality and developer regarding the abatement.

Response: On July 29, the City Council passed a resolution opening the tax abatement committee meetings to the public and press in order to provide even greater transparency with regards to project presentations and abatement negotiations. Although the Committee is the Mayor’s over whom the Council exercises no direct control, the Mayor will likely amend the Executive Order creating the committee to require it to publicly advertise its meetings in accordance with the Open Public Meetings Act, or “Sunshine Law”.

With regard to current practice, after the tax abatement committee meets any documents Issued by the committee, such as committee recommendations, developer forecasts and the committee’s cost benefit calculations are available under the Open Public Records Act and are generally also on file in the Office of the City Clerk by the time the Council Acts to to approve or disapprove a tax abatement. Applications for abatement and the proposed forms of abatement agreements are filed with the ordinance before the City Council votes. Before any tax abatement ordinance is adopted, it is advertised and the public is invited to comment. Before the Council votes, it conducts a public hearing to hear comments from residents and stakeholders. After the public hearing and if the ordinance is adopted, it is published again. The meeting dates and agendas of the City Council are also posted on the city’s website.

The public also has the right to challenge the approval of tax abatement after they are approved. This is accomplished by filing an action in lieu of prerogative writ in Superior Court within 20 days from the date of publication of the adopted ordinance. (NJSA 40A:20-12).

By law the Mayor has 60 days to form his recommendation before the application

is sent to the City Council. However, to provide yet more public scrutiny and input into the tax abatement process, the Mayor has directed that all applications for tax abatement shall be filed immediately upon receipt with the Office of the Clerk and that a notice of the filing be posted and sent to the newspaper. This will allow additional time for public review, scrutiny and input.

3) NJ law does not limit the number of abatements a municipality can grant or the amount of a municipality's revenue that can come from PILOTs.

Response: Abatements are driven by requests from developers; therefore it is not conceivable that the city would unilaterally abate existing property to shortchange other taxing jurisdictions or close temporary budget gaps. Abatements are inherently limited by the number of viable new development projects proposed in a given period, which are themselves limited by available land, access to credit and market demand. Furthermore, projects are abated for a set duration and cannot be re-abated upon expiration without undertaking a complete and comprehensive rehabilitation, according to the current New Jersey statute.

Therefore, it would be impossible under the current system for Jersey City to arbitrarily abate an unlimited number of properties. Nor would it be in the city's interests to do so. As old abatement agreements expire, the properties move to conventional taxation, permanently expanding the city's tax base. The conventional tax revenues are then allocated to the city, school district and county.

Given the country's current financial crisis and the limited aid available for struggling urban areas, the efforts of urban areas to raise revenue independently should be encouraged rather than further limited.

4) Municipalities are not required to audit abated properties for compliance with the abatement agreement.

Response: Jersey City has continually modified and improved its use of the tax abatement statute to ensure accurate taxation of the properties without the need of expensive outside auditing. Current city policy strongly disfavors project-cost agreements for this reason and primarily bases abatements on the sale price for condominiums and the annual gross revenues for rental properties. For condominiums, the sale price is accurately recorded with the city in the form of the deed. For rental properties, the taxable entity must submit a certified financial statement to the city's financial professionals that accurately reports its revenue from the property. The city has approved project cost agreements in the past, and these were audited at the time of construction.

The city also tracks the number of local jobs created on each abated project through Project Labor Agreements and has a city employee explicitly designated to track these agreements. The

city is currently upgrading its database to more accurately track project hiring and respond to discrepancies.

5) The justification used by governing bodies in awarding abatement is often lacking.

Response: Despite its desirable location, Jersey City also has environmentally contaminated land, aging and inadequate infrastructure, and high construction and land acquisition costs, all of which make developing here more expensive than other competing locations. New Jersey also has the highest property taxes in the nation. All of these factors refute the assertion that development would have occurred in Jersey City without incentives.

While there is no irrefutable empirical proof that abatements drive development, a recent study of Philadelphia by Econsult Corp. found that two-thirds of recent development in the city was abatement-induced. Furthermore, a 2001 study of tax abatements by the University of Kansas found that within defined geographic areas, such as the New York metropolitan region, abatements play a critical role in where a company will choose to locate and invest.

6) Many of the developers who receive abatements make political contributions to the officials who granted those abatements.

Response: The author makes the general assertion that many Jersey City public officials received campaign contributions from developers who later received abatements, but offers no hard evidence or figures to support her statement.

Abatements are granted to projects that will increase the city tax base, redevelop underutilized property, create jobs and improve Jersey City's housing stock. Projects are individually evaluated on their merits and their ability to positively contribute to the redevelopment of Jersey City.

In 2007, the Jersey City Municipal Council passed the "Contractor Pay-to-Play Reform" ordinance, which limited business entities receiving municipal contracts to an annual \$300 donation to any local candidate or candidate committee and \$500 to any joint candidate committee. The law defines a business entity as any incorporated firm as well as any individual or individual's spouse. Further, state election law requires all campaign contributions to be filed with ELEC and available online for public review.

Additionally on September 9th, 2009, at the request of Mayor Healy, the City Council passed the Redevelopment Pay-to Play Reform Ordinance. This Ordinance limits the ability of any redeveloper to contribute to campaigns from three months prior to filing an application with the Jersey City Redevelopment Agency to become the designated redeveloper. Not only are the developers prohibited from donating but all professionals, consultants or lobbyists contracted or employed by the business entity ultimately designated as the redeveloper are also precluded from contributing.

7) **Despite the availability of some abatement-related information online, abatement information in Jersey City is not well maintained or readily available.**

Response: The author concedes that a list of all abatement agreements from 1989 to present is publicly available online as are all abatement ordinances from 2006 to present. She also admits that most other records are available through the OPRA process, though it may take time and effort to locate the exact records requested. These admissions show that Jersey City's abatement process is adequately transparent for any resident or stakeholder interested in researching a specific development, neighborhood or time period. In fact, every abatement agreement is certified on an annual basis by the tax assessor and can be accessed through that office.

For a more comprehensive study reaching back more than two decades, it is unrealistic to expect that all records will be available in one department on demand. Old municipal records of any kind in any municipality take time and effort to obtain.

Jersey City is currently constructing an electronic abatement database that will centralize much of this information, making it easier for the public to view abatement data and obtain information on old abatements.

8) **Only a small percentage of people working on abated projects are Jersey City residents despite the requirement that abatement recipients make a "good faith effort" to hire city residents.**

Response: In the past, the city has attempted to impose a categorical hiring standard forcing the labor unions to hire local and minority residents. However, the ordinance was challenged and struck down in federal court as an unjustified set-aside program. Because the city did not want to abandon its local hiring goals, it set out to craft an agreement with developers and the labor unions that would be effective and withstand legal challenges.

The first attempt was the Project Employment Agreement which was designed to pass judicial muster and required abated developers to make a good faith effort to hire local and minority laborers by posting ads, conducting community job fairs and reaching out to non-profits and city agencies and non-profits serving the unemployed. This agreement is still enforced on smaller abated projects without union participation and the hiring efforts are tracked by the city.

The state Legislature then passed legislation that paved the way for the current Project Labor Agreement and apprenticeship program, which requires that 20 percent of laborers on abated projects worth more than \$25 million be union apprentices from Jersey City. The Project Labor Agreement is a cooperative effort between the city and the building trade unions that, since 2007, has placed more than 100 city residents on a high-paying, skilled career track. If these projects were not granted tax abatements, the city would have no leverage to impose this type

of agreement and it is conceivable that 0% of the project's workers would be Jersey City residents.

- 9) **On at least two occasions, the City Council in Jersey City amended an existing long-term tax abatement agreement after it was asked to do so by the developer.**

Response: Jersey City rarely renegotiates tax abatement agreements, hence the low number of renegotiations (3) relative to the total number of abatement agreements (over 100). In two of these cases, the projects (The Beacon and Canco Lofts) were monumental renovations of vacant, non-residential buildings in sections of the city removed from the waterfront. The Beacon, for instance, is the largest historic restoration project in the United States with restoration costs alone exceeding \$300 million. When it is completed, it will have gone from an abandoned eyesore to the cornerstone of a neighborhood transformation.

In the third, most recent renegotiation, the city was asked to amend the terms for Crystal Point. This project is on the Hudson River waterfront, but is in a more remote location than other similar condominiums – there is no active street life and is not as close to public transportation.

Renegotiation is seen as a last resort by the tax abatement committee to be considered under extreme circumstances. The worst economic downturn since the Great Depression qualifies as extreme in this case.

NJPP Recommendations

- 1) **Amend the long-term abatement law so abatements can only be granted in “blighted areas” where development would otherwise not take place. The law should clearly define what constitutes a “blighted area” and should set standards for proving that development would not take place without the abatement.**

Response: As stated previously, there is no significant legal or practical difference between the “blight” standard used in earlier decades and the “area in need of redevelopment” standard used today per New Jersey statute. Jersey City has made certain that the vast majority of its redevelopment plans adhere to this standard.

There is no objective formula or quantitative analysis presented in this study – or any study - to determine whether a project would move forward without a tax abatement. Any such criteria would be arbitrary at best and could unnecessarily hinder local economic development efforts.

- 2) Require that abatement negotiation between a municipality and developer be made public when they begin. Deadlines should be set to guarantee that the public has more time to analyze and challenge the proposal before it is enacted, and to review and challenge any agreement that is enacted.**

Response: We have addressed this point in section 2, pages 2 and 3.

The abatement committee is an advisory committee of the administration designed to give the council a recommendation that reflects city abatement policy, as well as budgetary constraints and economic development goals. However, it is up to the city council to ultimately determine what is best for the city.

- 3) Limit the percent of a municipalities' revenue that can come from PILOTs related to abatements so that municipalities do not rely on tax abatements to balance their budgets. The current situation tends to favor abatements if immediate money is needed. Municipalities also should be required to continuously evaluate their tax abatement policy to determine if it benefits its residents.**

Response: Abatements are not used to balance budgets because viable, abatable projects do not just materialize at times of budget crisis. Abatement agreements are developer-driven and developers are driven by land availability, access to financing and market demand – none of which are related to city budget gaps. While the prepayment portion of the abatement agreement is absorbed into the city revenue stream and used to offset current expenses, the city does not solicit or award tax abatements simply to secure prepayments. A limit such as the one proposed by the author would only serve to stifle development in New Jersey's cities and push it elsewhere.

Jersey City currently evaluates on its abatement policy on a periodic basis, subject to changes in market conditions. This is reflected by changes in the abatement policy over the years to reflect demand shifts from office space to condominiums to, most recently, market-rate rental units.

- 4) Prohibit developers from receiving both a tax credit and other incentives from the state and abatement from the municipality. This will help ensure that developers pay a more appropriate amount of taxes. Developers who apply for a new abatement should be required to list all abatements they have received in the municipality and their compliance record in meeting the conditions of those abatements.**

Response: Abatements, tax credits and other economic development incentives are frequently layered on top of one another to facilitate extraordinarily difficult projects, such as the redevelopment of Journal Square or an extremely contaminated former industrial site. This is common practice in states around the country and it would be unwise for New Jersey to unilaterally disarm and put itself at a competitive disadvantage. Such a prohibition serves no clear purpose and it is not well-documented in this report how multiple incentives cause harm.

- 5) **Grant abatements for no longer than 10 years and bar the transfer of abatements from the first owner of a condominium or office building to later ones. Subsequent owners should receive a small fraction of the abatement benefits. Now, owners of tax abated properties receive a windfall when they sell their property because the monthly mortgage payment of the new owner does not include the full value of the property taxes – a substantial cost in New Jersey. Phasing out the abatement by lowering it with each sale would help bring the cost of abated properties into line with properties with no abatements.**

Response: Long-term abatements for condominiums are essential selling tools that help distinguish condominiums in Jersey City from those in competing markets. They are designed to dovetail with the conventional mortgage term of either 20 or 30 years. This drives sales in Jersey City and promotes home ownership in a way that a 10-year abatement could not. Allowing owners to transfer their abatement to subsequent buyers also helps keep Jersey City's resale market thriving.

- 6) **Require state review and approval of all property tax abatements over a certain value. The state should be allowed to rescind abatements it deems unnecessary or not in the best interest of local or state taxpayers. The state should also be able to revoke a developer's abatement if the developer fails to accurately report financial information or to comply with municipal agreements regarding the payment of fees or creation of jobs.**

Response: State review and approval would add an unnecessary and burdensome bureaucratic layer onto the process and significantly slow down local development. This extra layer would add costs and delay some projects beyond their window of viability. Furthermore, state officials would be weighing in on unique local circumstances they know little about, depriving municipalities of the power to determine what type of development is most advantageous for their community, a violation of New Jersey's constitutional principle of home rule. This recommendation would also have a significant impact on the city's ability to negotiate with developers since every agreement would first have to be approved by the state.

Finally, requiring the state to monitor abatement agreements across the state for compliance would necessitate a growth of the state bureaucracy at a time when the state can least afford it. Compliance can be much more efficiently monitored at the local level by local officials familiar with the developments and their progress.

It is well documented that additional layers of bureaucracy dissuade business and drive investment away, and New Jersey cannot afford to do either.

- 7) **Make available online information regarding tax abatements including ordinances, agreements and compliance reports. The information should be updated semi-annually. The state Department of Community Affairs should promptly comply with the requirement that it track tax abatement information and post its findings online in an easy-to-read format. The name of the legal entity behind the project and the project name should be clearly displayed.**

Tax abatement information should also be provided in the Division of Taxation's Abstract of Ratables.

Response: Much of Jersey City's abatement information is already available online, including a comprehensive list of abated properties dating to 1989 and copies of all abatement ordinances passed since 2006. As with all of Jersey City's internet activity, this online posting system is in the process of being enhanced as technology improves.

- 8) Bar elected officials from granting abatements to developers who have contributed to their campaigns. There should also be a year-long moratorium on negotiations between an elected officials and a developer who contributed to the official's campaign. This should apply to the developer's employees, stockholders and relatives.**

As previously stated, Jersey City has already passed the "Contractor Pay-to-Play Reform" ordinance, which limits business entities receiving municipal contracts to an annual \$300 donation to any local candidate or candidate committee and \$500 to any joint candidate committee. And, the City further advanced campaign reform by passing the Redevelopment Pay to Play Ordinance on September 9th, 2009.

Abatements are granted to projects that will increase the city tax base, redevelop underutilized property, create jobs and improve Jersey City's housing stock. They are evaluated on the basis of the project.

- 9) Provide the county with a greater share of the money from the PILOT agreements. The school district should also receive a proportionate share of the money.**

Jersey City conducts a thorough cost-benefit analysis of every abatement agreement before it is recommended to the council to determine the cost of city services that will be incurred by the development. In all cases but low-income housing developments, the abatement agreements are "cash positive" to the city, meaning that they generate more in revenue than they cost in city services. This is largely because most of the condominium and market rate rental developments are geared toward young professionals and older couples who do not have children attending the public schools. In addition, many of these developments are high-rises that provide their own security personnel and fire suppression systems, further decreasing the burden on city services.

- 10) Set financial penalties for developers who fail to hire local residents for at least half the jobs on a project. Developers that fail to meet that goal should be required to contribute \$2,000 for every employee who works on the project toward a local employment training program sponsored or endorsed by the municipality.**

Response: As stated, Jersey City has attempted to impose hard hiring thresholds in the past, but the effort was found to be unconstitutional in federal court. In light of that decision, the city has

proactively partnered with the labor community to institute the Project Labor Agreement and create a pathway for local residents to learn a skilled trade and earn union membership. Fifty percent local hiring is an admirable goal, but local residents must first be trained and admitted into the labor unions. As more local residents become qualified, Jersey City is committed to aggressively promoting their employment.